ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the matter of	)	
	)	
Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	Docket No. 95-185
	)	
Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers	)	

BELL ATLANTIC REPLY COMMENTS

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Dated: March 25, 1996

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Introduction & Summary

The Commission is required both as a matter of law and of good policy to allow LECs to recover their costs of terminating other carriers' traffic, whether wireline or wireless. The "bill & keep" proponents' attempt to get a free lunch would require the Commission to make several implausible and unconstitutional interpretations of its statutory authority and to reverse no fewer than three prior decisions.

There is no "public policy" reason to overcome the legal constraints on the Commission's authority. In fact, allowing CMRS providers to complete calls on LEC networks at below-cost rates would create a subsidy for an industry that doesn't need one at a time when Congress has directed the Commission to eliminate hidden subsidies. This subsidy will, in large part, be borne by other local exchange customers. It would also give CMRS providers an artificial competitive advantage over competing wireline exchange carriers that pay the cost of completing their calls on interconnected networks under the terms of the Act.

There is no reason for the Commission to address LEC-CMRS interconnection arrangements in a separate proceeding. The Commission should instead address them in its proceeding to implement Section 251 of the 1996 Act, and adopt consistent interconnection requirements for wireline and wireless local service providers.

I. LEC-CMRS INTERCONNECTION ARRANGEMENTS SHOULD BE SUBJECT TO THE SAME REQUIREMENTS AS INTERCONNECTION ARRANGEMENTS BETWEEN COMPETING WIRELINE LOCAL EXCHANGE CARRIERS

This docket and the Telecommunications Act of 1996 share a common goal: to provide for competition in the local exchange marketplace.[1] To accomplish this objective, Congress imposed a duty on all incumbent local exchange carriers to interconnect with telecommunications carriers providing competing local exchange service and, under Section 252(d)(2) of the 1996 Act, to negotiate reciprocal cost-based compensation for completing each other's calls. The proponents of "bill & keep" argue that the Commission should nonetheless mandate terms for LEC-CMRS interconnection that do not provide for mutual compensation.

The first step in the broadband CMRS providers' plan to obtain "bill & keep" interconnection arrangements for all interstate and intrastate traffic is to argue that the

[1] See Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, NPRM at ¶ 3 (rel. Jan 11, 1996) ("NPRM") ("We tentatively conclude that in order to ensure the continued development of wireless services as a potential competitor to LEC services, we should move expeditiously to adopt interim policies governing the rates charged for LEC-CMRS interconnection"); H.R. Rep. No. 204, 104 Cong., 1st Session, pt. 1, at 48 (1995).

Commission has had authority to preempt state jurisdiction over LEC-CMRS interconnection arrangements since 1993 and that its authority was untouched by the Telecommunications Act.[2] The source of this authority, they claim, is Section 332(c)(3)(A). But the very provision they cite is, on its face, flatly inconsistent with their argument. Section 332(c)(3) (A) provides *only* that "[n]o State or local government shall have the authority to regulate the entry of or the rates *charged by* any commercial mobile service . . . ." The broadband CMRS providers would have the Commission interpret this provision as extending preemption authority to the rates that CMRS providers *pay to* interconnecting LECs so that the Commission can regulate those rates.[3] This interpretation, however, contradicts the plain language of the statute. Section 332(c)(3)(A) expressly preempts state regulation of the rates charged "by" -- not "to" -- any CMRS provider.

Congress' preemption was furthermore limited to end-user services. "Commercial mobile service" is defined as "any mobile service . . . that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public . . . ."[4]

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[2] See, e.g., Comments of CTIA at 56-58.

[3] Omnipoint Comments at 13-14 ("[b]ecause LEC interconnection rates would have to be recovered by the CMRS operator through the rates to its subscribers, there is little sense in distinguishing interconnection rates charged to a CMRS operator from rates charged by a CMRS operator; states are preempted from regulating either one") (emphasis omitted).

[4] 47 U.S.C. §332(d)(1).

It does not extend to the carrier-to-carrier interconnection service rates that broadband CMRS providers pay to other carriers, including LECs.

Moreover, the Commission has already found that the preemption provisions of Section 332 are designed to *de*regulate local CMRS rates to their subscribers and thus preclude the states from regulating them. The revised Section 332 "does not extend the Commission's jurisdiction to the regulation of local CMRS rates."[5] To adopt the broadband CMRS providers' requested interpretation, the Commission would have to overrule itself on this point.

Furthermore, the Commission found earlier this year that Section 332(c)(3)(A) does not deprive the states of jurisdiction over interconnection compensation arrangements.[6] To adopt the broadband CMRS providers' interpretation, the Commission would have to reverse its ruling on this point as well.

The second step in the broadband CMRS providers' argument requires a finding that the interstate and intrastate aspects of LEC-CMRS interconnection are inseparable.[7] Such a finding, however, is belied by the Percent Interstate Usage ("PIU") reports that broadband CMRS providers have submitted to Bell Atlantic for many years. These auditable reports show that the CMRS providers themselves are able to distinguish

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[5] Implementation of Sections 3(n) and 332 of the Communications Act, 9 FCC Rcd 1411, 1480 (1994).

[6] Petition on Behalf of the Louisiana Public Service Comm'n for Authority to Retain Existing Jurisdiction Over Commercial Mobile Radio Services Offered Within the State of Louisiana, 10 FCC Rcd 7898, 7908 (1995).

[7] See, e.g., Cox Comments at 36-37; Joint Comments of Sprint Spectrum and APC at 44-49.

interstate and intrastate aspects, and that on average 85 percent of CMRS-LEC interconnection traffic is intrastate.[8]

Moreover, the Commission has always distinguished between mandating a federal right to physical interconnection to protect interstate services and permitting the states to regulate intrastate interconnection rates. Interstate interconnection rates and intrastate interconnection rates have always been regarded by the Commission as separable.[9] The Commission would have to reverse itself on this third point as well in order to adopt the broadband CMRS providers' argument.

The last step requires revisions to existing Commission rules. Section 20.11 now provides that "[a] commercial mobile radio service provider shall pay reasonable compensation to a local exchange carrier in connection with terminating traffic that originates on the facilities of the commercial mobile radio service provider."[10] In addition, the Commission has held that "to the extent that a cellular operator does provide interexchange service through switching facilities provided by a telephone company, its obligation to pay carrier's carrier charges is defined by §69.5(b) of [the Commission's]

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[8] NARUC finds that "the vast majority" of CMRS traffic is intrastate. NARUC Ex Parte at 8 (filed March 5, 1996). See also PacTel Comments at 31 ("[o]ur volumes of traffic involving CMRS interconnection during 1995 were 90.3% intrastate and 9.7% interstate").

[9] The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, 2 FCC Rcd 2910, 2912 (1987) ("[c]harges applicable to cellular interconnection are separable. As with telephone plant depreciation costs, it is possible to divide the actual interstate and intrastate costs of cellular interconnection").

[10] 47 C.F.R. § 20.11.

rules."[11] Both of these rules would have to be changed in order to implement the Commission's "bill & keep" proposal. The NPRM, however, did not identify either of these rules or propose any specific changes to them.

II. THE "BILL & KEEP" PROPONENTS HAVE NOT JUSTIFIED FORCING LOCAL TELEPHONE CUSTOMERS TO SUBSIDIZE WIRELESS OFFERINGS

There is little dispute that the Commission's proposed "bill & keep" policy would force local exchange carriers to provide interconnection services to CMRS providers at a zero rate that is unquestionably below cost.[12] In economic terms, this below-cost pricing would be a subsidy to broadband CMRS providers.[13] These costs are substantial: USTA estimates the subsidy to CMRS providers measured by termination costs alone (*i.e.* excluding any market-based margins over costs) would amount to $440 million annually.[14] The subsidy measured by what CMRS providers actually pay for completion of their calls would be substantially higher.

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[11] The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, 59 R.R. 2d 1275, 1284-5 n.3.

[12] Even CTIA's expert witness concedes that "[t]he "bill & keep" price of zero is too low during the busy hour or, more generally, for traffic that does impose capacity costs on the terminating carrier." Brenner, Steven R. and Mitchell Bridger M., Economic Issues in the Choice of Compensation Arrangements for Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers at 32 (attached to CTIA Comments filed Mar. 4, 1996).

[13] Statement of Robert W. Crandall at 8-9 (attached to Bell Atlantic Comments filed Mar. 4, 1996) ("Crandall Statement"); Reply Statement of Robert W. Crandall at 5-6 (copy attached) ("Crandall Reply Statement").

[14] Rohlfs, Jeffery H., Shooshan III, Harry M. and Monson, Calvin S., Bill-and-Keep: A Bad Solution to a Non-Problem at 10 (attached to USTA Comments). Some might argue that this subsidy will disappear as traffic flows between broadband CMRS providers become balanced. This is not necessarily the case. Broadband CMRS traffic

The Commission's "bill & keep" proposal would necessarily increase the rates charged to other customers of the local exchange carrier in order to subsidize broadband CMRS providers. According to CTIA and USTA, CMRS providers currently pay between $800 million and $1.1 billion for completing their calls. Based upon reports received from CMRS providers, Bell Atlantic believes that 85 percent of these revenues are intrastate. The Commission's "bill & keep" proposal would eliminate these revenues and leave state commissions with the task of replacing them and their associated contribution through other rate increases to local subscribers. And even then, with the increasing opening of the local market to competition that the 1996 Act requires, the idea that local exchange companies can sustain rate increases sufficient to make up for these shortfalls is questionable at best.

Moreover, in order to implement its mandatory "bill & keep" proposal, the Commission would have to "federalize" all of this traffic to escape the application of the Telecommunications Act.[15] By taking this action, the Commission would shift nearly all of the costs of CMRS interconnection from the state to the federal jurisdiction. This jurisdictional shift would, in turn, require an exogenous price cap adjustment for local

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volumes are growing at about 50 percent per year. If the balance of traffic remained constant, this volume growth alone would cause the subsidy to increase substantially each year. Just to maintain the size of the subsidy at its current level, the traffic flows must become more balanced each year to offset the effect of the traffic volume growth. Moreover, the Commission's "bill & keep" proposal is likely to increase, rather than reduce, the traffic flow imbalance. By reducing the price for completing calls on LEC networks (without changing the price for completing calls on the CMRS network), one would expect "bill & keep" to stimulate traffic from CMRS providers to LEC networks, thus increasing the traffic flow imbalance.

[15] See text accompanying footnotes 2-9, supra.

exchange carriers, such as Bell Atlantic. In the end, other customers would help fund the Commission's subsidy to broadband CMRS providers.

Finally, the "bill & keep" proponents do not need to have their costs placed on the backs of local customers.[16] These companies have bid more than $8.8 billion for the spectrum to provide wireless local exchange services[17] and are hardly in need of a subsidy.[18] Establishing a new subsidy for the broadband CMRS industry would be not only ill advised but also contrary to the Act. Congress has already directed the Commission to replace existing subsidies with Federal universal service support mechanisms.[19] The Telecommunications Act of 1996 does not contemplate the creation of new subsidies to give a particular industry or technology an artificial advantage in the marketplace. Under the Commission's "bill & keep" proposal, only broadband CMRS providers would have a right to complete all their calls on incumbent local exchange networks at no charge. All other providers of competing local exchange services will obtain interconnection under the terms of the Telecommunications Act and will pay the

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[16] See PageNet Comments at 38-39 n.43 (treating CMRS providers specially under Section 251 "would result in a discriminatory classification, in contravention of Section 202(a) of the Act").

[17] FCC Auctions Division (March 25, 1996) at http:// www.fcc.gov/wtb/5_cursum.gif.

[18] Even if the 15 percent of traffic that flows from LECs to CMRS providers were offset, on a theory of "in-kind" compensation, against 15 percent of the traffic that flows from CMRS providers to LECs, the remaining 70 percent of traffic, which is all sent from CMRS providers to LECs, would be terminated over the LECs' facilities for free.

[19] See 47 U.S.C. § 254.

costs of completing their calls. There is simply no justification for such selective, unauthorized favoring of broadband CMRS providers.

III. THE COMMISSION'S PROPOSED "BILL & KEEP" RULE WOULD CONSTITUTE A TAKING IN VIOLATION OF THE FIFTH AMENDMENT

Because "bill & keep" requires local exchange carriers to dedicate facilities--wires and switches--for the uncompensated termination of CMRS traffic bound for landline customers, it implicates the Takings Clause of the Fifth Amendment of the Constitution. In 1995 Bell Atlantic terminated 1.7 billion minutes of CMRS traffic on its network,[20] a figure that is growing by nearly 50% per year. Completion of this traffic occupies substantial facilities owned and maintained by Bell Atlantic. Under "bill & keep," Bell Atlantic would be neither directly nor indirectly compensated for such occupation of its wires and switches. The "bill & keep" rule that the Commission has proposed would thus mandate an uncompensated taking of local exchange carriers' facilities.

This takings concern must also color the Commission's interpretation of its statutory authority. It is well established that "[w]ithin the bounds of fair interpretation, statutes will be construed to defeat administrative orders that raise substantial constitutional questions."[21] Where property rights are implicated, a fair reading of the underlying statute must provide a "clear warrant" for an agency's authority to issue an

[20] Statement of John M. Campanola at 2 (copy attached) ("Campanola Statement").

[21] Bell Atlantic Telephone Companies v. F.C.C., 24 F.3d 1441, 1445 (D.C. Cir. 1994); see also Rust v. Sullivan, 500 U.S. 173, 190-91 (1991).

order that effectuates a taking.[22] As we have explained, in the instant proceeding the Commission not only lacks a clear warrant, but indeed lacks any authority under any statute to require local exchange companies to provide uncompensated completion of CMRS providers' traffic. Because the proposed "bill & keep" rule raises substantial takings questions and because there is no statutory authority for such a rule, it would be invalid under applicable precedent.[23]

A regulation creates a physical occupation if it requires a property owner to give others ongoing access to all or any portion of the owner's premises. If such access is uncompensated, the regulation constitutes a taking "to the extent of the occupation, without regard to whether the action achieves an important public benefit or has only minimal economic impact on the owner."[24]

The proposed "bill & keep" order unquestionably mandates physical access to local exchange companies' property. The switches and wires necessary to complete the CMRS providers' traffic cannot be used for any other purpose to the extent they are being used by CMRS providers to complete traffic from their customers to local exchange companies' customers.[25] The proposed rule would in substance grant an easement to CMRS providers allowing them free use of a local exchange carrier's facilities in order to reach that carrier's customers. The rule would prevent the local carrier from either

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[22] Bell Atlantic at 1446.

[23] See Id., at 1445.

[24] Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 434-35 (1982).

[25] Campanola Statement at 1-2.

seeking payment from the CMRS provider or excluding the CMRS provider from the local exchange carrier's facilities.

The local exchange companies would thus be deprived of exclusive use and allocation of their proprietary, physical facilities. In this regard the proposed rule goes well beyond a mere regulation of *local exchange carriers' use* of their facilities, and in fact mandates that physical capacity--capacity that local exchange carriers must build to accommodate peak usage--be set aside for free use by CMRS providers. The proposed rule is thus an easement, not an ordinary regulatory restriction.

It is of no moment that traffic flow from CMRS providers may be of varying or intermittent volume. A continuing entitlement "to pass to and fro," such as an easement, extinguishes an owner's critical right to exclude and works a per se taking, even if only "intermittent intrusion" results.[26] Nor does the proposed rule work any less of a permanent occupation by virtue of being "interim." "A 'permanent' physical occupation does not necessarily mean a taking unlimited in duration."[27] Rather, the condition of permanence refers to the nature of the intrusion and distinguishes an occupation that substantially interferes with property rights from a "mere temporary trespass."[28] The proposed "bill & keep" rule would mandate ongoing, uncompensated completion of

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[26] Nollan v. California Coastal Comm'n, 483 U.S. 825, 831-32. (1987).

[27] Skip Kirchdorfer, Inc. v. United States, 6 F.3d 1573, 1582 (Fed. Cir. 1993); Hendler v. United States, 952 F.2d 1364, 1376 (Fed. Cir. 1991).

[28] Kirchdorfer, 6 F.3d at 1582; Hendler, 952 F.2d at 1377.

CMRS-originated traffic for an indefinite period, and therefore indisputably works a "permanent" occupation of local exchange facilities for purposes of the Takings Clause.[29]

Under the Commission's proposed order, local exchange carriers will not receive just compensation for this physical occupation. The requirement that local exchange companies charge a rate of zero for completing CMRS providers' traffic bars direct compensation. And the reciprocal ability of local exchange companies to have their traffic terminated at no charge on CMRS providers' networks fails to provide indirect compensation in the form of an offsetting benefit. Of the traffic flowing between CMRS providers and local landline carriers, the vast proportion terminates on landline, not CMRS, facilities. Of the minutes of traffic between CMRS networks and Bell Atlantic, 85% flows to Bell Atlantic and only 15% to the CMRS providers.[30] In effect, then, if the balance of traffic remains at its current level, Bell Atlantic must terminate 70% of total traffic between its network and CMRS providers at no charge. And if CMRS providers sent still more traffic into Bell Atlantic's network, they would use the facilities needed to carry all that traffic for free.

The unprecedented effect of the proposed "bill & keep" regime would, moreover, interfere substantially with the expectations upon which local exchange carriers have based investment decisions regarding the facilities used to complete CMRS-originated traffic. The decision of how much switch and wire capacity to install indisputably

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[29] Cf. Nollan, 483 U.S. at 831 (ability to exclude others from one's property is "one of the most essential sticks in the bundle of rights that are commonly characterized as property") (internal quotations omitted)

[30] Campanola Statement at 2-3.

requires an assessment of future revenues to be earned from such facilities. The interference with property rights that undermines investment-backed expectations also weighs towards a finding that the regulation in question would cause a taking.[31]

In sum, the Commission's proposed "bill & keep" rule would impose a substantial, uncompensated occupation of local exchange companies' switches and wires. It effectively would grant an easement to CMRS providers for free use of local exchange facilities to complete their calls to customers on the other side. As the Supreme Court has held,[32] an uncompensated occupation is a taking even if it has "only minimal impact on the owner." Here the economic effect on local exchange carriers would be far from minimal: Bell Atlantic, for example, stands to lose revenues of at least $67 million per-year if "bill & keep" is implemented.[33]

CONCLUSION

The CMRS industry has created an elaborate and tortuous path for the Commission's implementation of its "bill & keep" proposal. To follow this path the Commission would have to overturn no fewer than three of its prior decisions and adopt several implausible interpretations of law. It is a path fraught with pitfalls.

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[31] Penn Central Transp. Co. v. New York City, 438 U.S. 104, 124 (1978); see also Duquesne Light v. Barasch, 488 U.S. 299, 307 (1989) (regulation of utility rates constitutes a taking where rates are so unjustly low as to be confiscatory); Federal Power Comm'n v. Hope Natural Gas Co., 320 U.S. 591, 602 (1944) (rate on a regulated operation not confiscatory if it allows carrier to earn returns on investment sufficient to attract investors).

[32] Loretto, 458 U.S. at 434-35.

[33] Campanola Statement at 2.

Even if the Commission could mandate its "bill & keep" proposal, it would be bad public policy to do so. Allowing CMRS providers to complete calls on LEC networks at below cost rates would create a subsidy for an industry that doesn't need one while the Commission is working hard to eliminate existing subsidies. In addition, by fixing the LEC-CMRS interconnection rate at zero, the Commission would foreclose competition between competing local exchange carriers for interconnection services and give CMRS providers an artificial advantage in the local exchange marketplace.

Finally, "bill & keep" would force an unconstitutional taking of local exchange companies' facilities by requiring those companies to dedicate a portion of their wires and switches to uncompensated completion of CMRS providers' traffic.

Based on the foregoing, there is no reason for the Commission to continue this docket.

Respectfully submitted,

The Bell Atlantic Telephone Companies

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Reply Statement of Robert W. Crandall[1] on Interconnection Policies for CMRS

I, Robert W. Crandall, state the following:

Not surprisingly, the PCS and cellular respondents in this matter have vigorously embraced the imposition of bill-and-keep LEC-CMRS interconnection rates as an "interim" policy. Such a policy would clearly redound greatly to the benefit of already highly-profitable cellular operations, but it would penalize the local-exchange companies (LECs) and potential new landline competitors (CLECs). Moreover, this subsidy to the wireless industry would be so attractive that its recipients would be loathe to relinquish it in future years.

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[1] Senior Fellow, The Brookings Institution. The views expressed herein are solely those of the author and should not be construed to represent the views of the Brookings Institution, its other staff members, or its Trustees.

Summary

In this reply, I address the economic arguments offered in favor of bill-and-keep in the analyses appended to the submissions of AT&T and the Cellular Telecommunications Industry Association (CTIA) in this matter. It is important to stress that neither of these analyses concludes that bill-and-keep, with its zero compensation rates for terminating calls, is an optimal policy given that the provision of capacity for such terminations cannot be accomplished at zero cost. Rather, these comments support the use of bill-and-keep for some indeterminate period until the appropriate compensation rates can be estimated and mandated. Unfortunately, neither of these analyses points out to the Commission that such an "interim" strategy redistributes revenues from regulated, revenue-constrained LECs to unregulated CMRS providers without any mention of a strategy for LEC recoupment of this reduction in revenues. In my original submission in this proceeding, I concluded that the optimal LEC-CMRS interconnection rates cannot be determined independently from other regulated LEC rates. Someone must pay for LEC services that regulators require to be delivered at a zero price for even an indeterminate interim period. The AT&T and CTIA expert analyses ignore this issue.

In addition, neither submission adequately addresses the question of why CMRS-LEC interconnections should be subsidized by other LEC ratepayers for even an interim period. I do not know of any evidence showing that cellular and PCS services require such a subsidy to develop rapidly. In fact, this seems contrary to the actual experience of dramatic growth in the cellular industry. Moreover, why should the Commission choose to subsidize wireless

competition at the expense of wireline competition? Once again, the AT&T and CTIA submissions provide no answers to these questions.

Optimal Interconnection Rates

The report by Steven Brenner and Bridger Mitchell (B-M), filed with the CTIA comments, provides an analysis of the determinants of economically-efficient LEC-CMRS interconnection rates. B-M show that the efficient rate structure may require a number of peak and near-peak rates and essentially zero rates during off-peak hours. These rates depend on the distribution of calling volume over the day or week, the degree to which such calling shifts among time periods, and the cost of adding to cellular switching and trunking capacity. The calculation of the optimal rate structure is a complicated problem, but it is clear from the B-M analysis that the correct solution to this problem is <u>not</u> a set of interconnection rates that uniformly equal zero. This is particularly true if the LEC rates for outbound or inbound local calls are also priced at zero.

B-M argue that current interconnection rates are not optimal because they do not reflect peak and off-peak conditions and because LECs have superior bargaining power over current cellular carriers in negotiating such rates. They are certainly correct that current interconnection rates do not fall to zero during off-peak periods, but nor are retail cellular rates generally zero during off-peak periods. Indeed, the existing structure of interconnection rates may not so much reflect unequal bargaining power as the fact that LECs generally receive no compensation from their own customers for terminating a call on a CMRS or any other local network because of the preponderance of flat-rate retail local service. CMRS systems, on the other hand, generally charge a large multiple of the current interconnection rates for both origination and termination. The currently negotiated interconnection rates thus result in net incremental revenues per call minute in both directions that are much higher for CMRS operators than for LECs. Indeed, it could be argued that the CMRS operators must have some bargaining power or else the LECs would garner a much large share of the revenues from these remunerative CMRS services.

The optimal interconnection rate does not depend on whether traffic is balanced or not. Regulated rates should be set to recover the long-run incremental costs of the service as long as the resulting rates are sufficient to cover the full cost of the carrier's operations. Alternatively, a competitive market should yield the same result. The only reason why the balance of traffic is important in this proceeding is that a bill-and-keep policy provides a subsidy to the carriers who originate more traffic than they terminate. B-M, as well as Bruce Owen in his comments appended to the AT&T filing, admit that such an imbalance currently exists in LEC-CMRS traffic, but that such an imbalance may not create a subsidy because termination costs are higher on CMRS networks than on LEC networks. Neither provides data to support this contention. The Commission should not adopt even an "interim" bill-and-keep policy, which is clearly inefficient, based simply on vague assurances that differences in termination costs may offset part or all of the implied subsidy to CMRS operators.

Promoting Competition

All subsidy schemes are defended by recipients as somehow advancing the public good. The defense of bill-and-keep by broadband CMRS providers is no exception. In this case, both the AT&T and CTIA submissions argue for the "interim" bill-and-keep proposal as a means of advancing competition in local telecommunications services. Presumably this competition would derive from additional cellular services, facilitated by the bill-and-keep subsidy, and from the more rapid development of new PCS systems.

Cellular services have been growing at a very rapid rate, about 40 percent per year. Indeed, they are growing so rapidly that the constraint upon their growth is most often their difficulty in building new cell sites, not their inability to reduce rates because of interconnection costs that may absorb 2 cents per minute of incremental revenues of 40 to 50 cents per minute during peak hours. Moreover, PCS operators recently bid nearly $ 8 billion for the two broadband PCS spectrum allocations, and a new set of bidders is now offering even higher prices for the third broadband allocation currently being auctioned. These bids were presumably tendered under the expectation that the existing interconnection policy would not change. If the Commission were now to change its interconnection policy, moving from negotiated rates to bill-and-keep, it would confer large rents upon the winning bidders because they could not have accurately anticipated the Commission's largesse last year when they were making their bids. Indeed, it is possible that the bids in the current round are even higher than those for the first two allocations because of the Commission's tentative proposal of bill-and-keep interconnection rates. This would suggest that a substantial amount of the subsidy in this proposal would simply flow to current CMRS operators, not to the eventual customers.

The most compelling argument for not adopting a bill-and-keep interconnection policy even for an interim period, however, is not simply that it would confer large rents on profitable existing cellular operators, but that it might impede the introduction of new wire-based terrestrial local technologies now in development. Subsidizing wireless systems to promote competition might actually delay competition if the true source of potential competition for the LECs is from wire-based systems, such as those now being developed by the cable-television industry. The Commission cannot presume to know where competition will likely develop; it should therefore not start picking winners by further rewarding the cellular industry or the recent winning bidders for PCS spectrum.

The Need for a Comprehensive Approach to Setting Interconnection Rates

Unlike the wireless rates, LEC rates are still regulated by the Commission and by the states. The structure and level of CMRS-LEC rates should not therefore be considered without some attention to the level and structure of other LEC rates. At the very least, the Commission should indicate how any revenue reductions from lower CMRS-LEC interconnection rates will be recovered. The CTIA and AT&T comments are silent on this issue, but the Commission cannot be. As long as the LECs are regulated, the Commission has a responsibility to assure that its policy decisions in this or any other matter do not imperil the ability of the LECs to recover their costs.

The optimal level of CMRS-LEC rates cannot be considered without full consideration of the optimal level of all LEC rates. The new Telecommunications Act of 1996 requires that the Commission establish rules to determine whether local telephone markets are open to competition. The development of meaningful competition requires that local rates be as free of subsidies as possible. A new proposal to saddle the LECs with yet another requirement to subsidize a telecommunications service does not advance the development of efficient local competition. At the very least, the Commission should address the impact of any CMRS-LEC interconnection policy on other rates and, therefore, the development of efficient market signals to advance competition.

Conclusion

The Commission's proposal to require bill-and-keep as an interim policy for CMRS-LEC interconnection is flawed for several reasons. First, bill-and-keep provides inefficient market signals to market participants, providing distorted incentives for terminating traffic on LEC or CMRS networks. Second, such a policy, even on an interim basis, would be a naked subsidy to existing CMRS systems that would be difficult to reverse in future years. Third, this subsidy would have to be borne by some group of LEC rate-payers, further distorting LEC rates at a time when the Commission should be moving quickly to end such distortions as it implements the Telecommunications Act of 1996. Finally, bill-and-keep distorts investment choices, subsidizing wireless investments at the expense of terrestrial wire-based technologies. Given the uncertainties concerning the most viable new local-telecommunications technologies, the Commission should be very reluctant to embark on a subsidy policy that favors one over the other.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Robert W. Crandall

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Statement of John M. Campanola

I, John M. Campanola, state the following:

1. I am the Director of Wireless Product Management for Bell Atlantic Network Services, Inc. I have responsibility for Bell Atlantic's interconnection arrangements with all CMRS providers.

2. CMRS providers interconnect with Bell Atlantic's network in a manner that allows them to complete calls to Bell Atlantic's customers. When they do so, their traffic makes use of the wires and switches that comprise Bell Atlantic's network. Those facilities cannot be used by Bell Atlantic for any other purpose to the extent they are being used by CMRS providers to complete